

### **REMARKS**

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 19-36 are presently active in this case. The present Amendment amends Claims 19-21, 24, 26, 28-30, 33, and 35-36; and adds new Claims 37-40 without introducing any new matter.

The outstanding Office Action rejected Claims 1-18 under 35 U.S.C. § 112, second paragraph, as indefinite. Claims 1-2, 4, 9-11, 13, and 18 were rejected under 35 U.S.C. § 102(e) as anticipated by Husemann et al. (U.S. Patent Publication No. 2004/0199056, hereinafter “Husemann”). Claims 3, 8, 12, and 17 were rejected under 35 U.S.C. § 103(a) as unpatentable over Husemann in view of Jacobsen et al. (U.S. Patent No. 6,198,394, hereinafter “Jacobsen”).

At the outset, Applicants respectfully submit that a Preliminary Amendment was filed on February 14, 2006, canceling Claims 1-18 and presenting new Claims 19-36. Therefore, in the next Office Action, Applicants respectfully request examination of the proper claims.

Claims 19-21, 24, 26, 28-30, 33, and 35-36 are amended to correct minor formal issues, and to address the rejection under 35 U.S.C. § 112, second paragraph. Because the changes are only formal, no new matter has been added. In addition, Claim 19 is amended to recite that the “modes of operation [are] related to incoming calls and a ring tone.” Independent Claim 28 is amended to recite a similar feature. This feature finds non-limiting support on p. 3, ll. 1-12. No new matter has been added.

In addition, new Claims 37-40 are presented. New Claims 37-38 depend upon independent Claims 19 and 28, respectively, and recite features related to the mode of operation, and find non-limiting support in Applicants’ disclosure as originally filed, for example at p. 3, ll. 1-12. New Claims 39-40 depend upon independent Claims 19 and 28,

respectively, and recite features related to a body position of the user and a noise level of an environment. These features find non-limiting support in the specification at p. 10, ll. 16-26.

In response to the rejection of Claim 1 under 35 U.S.C. § 102(e), Applicants respectfully request reconsideration of this rejection and traverses the rejection, as discussed next.

Briefly summarizing, Applicants' Claim 19 is directed to a mobile communication device, including ***a plurality of modes of operation related to incoming calls and a ring tone***, at least one of body-related parameters of an user or environmental parameters of the mobile communication device being able to be captured by the mobile communication device by at least one of sensors or measuring devices. The mobile communication device includes a selection module configured to evaluate at least one of the body-related parameters of the user or the environmental parameters of the mobile communication device; and an operational mode module configured ***to adapt a respective mode of operation of the mobile communication device*** according to evaluation data for the at least one of the body-related parameters or the environmental parameters.

Turning now to the applied reference, Husemann is directed to a system for placing a call from a mobile telephone 108 in response to receiving a signal from a portable externally worn body relay device 104. (Husemann, Abstract, Fig.1.) Husemann explains that a patient 102 can be in contact with body-worn devices 104 that perform a health or medical related function. (Husemann, p. 2-3, ¶ [0028].) The body-worn devices 104 can communicate with a wireless unit to the mobile telephone 108, and can transmit data regarding a health condition, or can initiate distress communication. (Husemann, p. 4, ¶ [0037]). In response, the mobile telephone 108 can perform data logging, or can make a distress call to a remote emergency unit. (Husemann, p. 4, ¶ [0037], ¶ [0038], ll. 1-3, ¶ [0039], ll. 1-4.) However, Husemann's mobile phone 108 does not change its operation mode as recited in Claim 19. In

particular, the cited passages of Husemann fail to teach “an operational mode module configured *to adapt a respective mode of operation of the mobile communication device* according to evaluation data,” where the modes of operation are related to an incoming call and a ring tone, as required by Applicants’ Claim 19. Husemann’s mobile phone 108 can merely start storing data in memory 122, or can make an emergency call.

Therefore, the cited passages of Husemann fail to teach every feature recited in Applicants’ Claim 19, so that Claim 19 is believed to be patentably distinct over Husemann. Accordingly, Applicants respectfully traverse, and request reconsideration of the rejections based on this reference.

In addition, the reference Jacobsen, used by the pending Office Action to form a 35 U.S.C. § 103(a) rejection, fails to remedy the deficiencies of Husemann, even if we assume that the combination is proper. Jacobsen is directed to a system for remotely monitoring physiological status of soldiers, to track casualties of soldiers in a battle. (Jacobsen, Abstract.) However, the cited passages fail to teach anything on modes of operation that are related to an incoming call and a ring tone, as required by Applicants’ Claim 19.

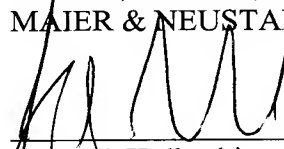
Independent Claim 28 recites features that are analogous to the features recited in independent Claim 19, but directed to a method. Accordingly, for the reasons stated above for the patentability of Claim 19, Applicants respectfully submit that the rejections of Claim 28, and the rejections of all associated dependent claims, are also believed to be overcome in view of the arguments regarding independent Claim 19.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 19-40 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,

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